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In re Application of
Paolo Pevarello et al
Application No. 10/049,288
Filed: May 9, 2002
Attorney Docket No. 218195USOPCT

: OFFICE OF PETITIONS
:
: DECISION ON PETITION
: UNDER 37 CFR 1.78(a)(3)
:

This is a decision on the petition filed November 4, 2003, under 37 CFR 1.78(a)(3), to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 365(c) for the benefit of the prior-filed applications set forth in the amendment filed concurrently with the instant petition.

The petition is **DISMISSED** as moot for the reasons stated below.

37 CFR 1.78(a)(2)(ii)¹ indicates that the time periods set forth therein do not apply if the later-filed application is: (1) an application for a design patent; (2) an application filed under 35 U.S.C. § 111(a) before November 29, 2000; or (3) a nonprovisional application which entered the national stage after compliance with 35 U.S.C. § 371 from an international application filed under 35 U.S.C. § 365 before November 29, 2000.

Since the instant nonprovisional application is the national stage entry of an international application filed prior to November 29, 2000, the provisions of 37 CFR 1.78(a)(3) for acceptance of a later claim for priority do not apply to the subject nonprovisional application. Accordingly, the petition is dismissed as involving a moot issue.

In view of the above, the \$1,330 fee submitted for the petition under 37 CFR 1.78(a)(3) is unnecessary. Accordingly, petitioner may request a refund of the \$1,330 petition fee submitted by writing to the Office of Finance, Refund Section. A copy of this decision should accompany petitioner's request.

Any inquiries concerning this decision may be directed to Karen Creasy at (703) 305-8859.

¹37 CFR 1.78(a)(2) was amended to place its provisions in separate paragraphs (a)(2)(i) through (a)(iv) for clarity. See **Requirements for Claiming the Benefit of Prior-Filed Applications Under Eighteen-Month Publication of Patent Applications**, 66 FR 67087 (December 28, 2001); 1254 Off. Gaz. Pat. Office, 121 (January 22, 2002) (final rule).

The application is being referred to Technology Center Art Unit 1626.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy